

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITES STATES OF AMERICA,

-vs-

REPORT AND RECOMMENDATION
ON A FELONY PLEA

FIVE STAR WAREHOUSE, LLC,

24-CR-6033-DGL-MWP

Defendant.

By Order of the Hon. David G. Larimer, United States District Judge, dated February 29, 2024, the above case was referred to me, with the consent of the defendant, to take the defendant's plea of guilty and to conduct an allocution pursuant to Rule 11 of the Federal Rules of Criminal Procedure for a Report and Recommendation. The following is my Report and Recommendation as to Defendant's plea of guilty.

On February 29, 2024, Defendant entered a plea of guilty in this case, as set forth in the transcript of the plea proceeding, which will be docketed upon receipt. In accordance with my oral Report and Recommendation at the close of the plea proceeding, it is my Report and Recommendation that Defendant's plea of guilty is in accord with the requirements of Rule 11 of the Federal Rules of Criminal Procedure and that your Honor adjudge the defendant guilty of the offenses~~x~~ to which the guilty plea was offered. Additionally, the Court orders that time is excluded under 18 U.S.C. 3161(h)(7)(A), until the District Court rules on this Report and Recommendation. I find that the ends of justice in granting this adjournment outweighs the best interests of the public and defendant in a speedy indictment and trial, as it will permit the

District Court to determine whether to accept the plea thereby eliminating the need for grand jury action or trial and benefit the defendant.

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within fourteen (14) days after receipt of a copy of this Report and Recommendation in accordance with the above statute and Rule 59(b) of the Local Rules of Criminal Procedure for the Western District of New York.

The district court will ordinarily refuse to consider on de novo review arguments, case law and/or evidentiary material which could have been, but was not, presented to the magistrate judge in the first instance. *See, e.g., Paterson Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988).

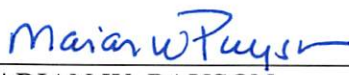
Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15 (2d Cir. 1989); *Wesolek v. Canadair Ltd.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 59(b) of the Local Rules of Criminal Procedure for the Western District of New York, "[w]ritten objections . . . shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." **Failure to comply with the provisions of Rule 59(b) may result in the District Court's refusal to consider the objection.**

Let the Clerk send a copy of this Order and a copy of the Report and Recommendation to the attorneys for the parties.

IT IS SO ORDERED.

DATED: February 29, 2024
Rochester, New York



MARIAN W. PAYSON
United States Magistrate Judge